

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

In Re:)	
)	
Clifton E. Buckrham, Jr.)	
Robin N. Buckrham,)	Case No. B-10-11225 C-7G
)	
Debtors.)	

**MOTION OF TRUSTEE TO: 1) SELL AT PUBLIC AUCTION CERTAIN REAL
PROPERTY; 2) TRANSFER LIENS TO THE PROCEEDS OF SALE; AND 3)
SCHEDULE A CONFIRMATION HEARING**

Everett B. Saslow, Jr., Trustee (the "Trustee"), by and through counsel, respectfully requests the Court to grant the Trustee the authority to sell certain real property at public auction with liens transferred to proceeds of sale as set forth below, and states as follows:

BACKGROUND

1. On July 1, 2010, the Debtors Clifton E. Buckrham, Jr. and Robin N. Buckrham ("Debtors") filed for relief under Chapter 7 of the United States Bankruptcy Code (the "Code"). The Court appointed Everett B. Saslow, Jr. as the Chapter 7 Trustee in this case.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157 and 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157. Venue is proper before this Court pursuant to 28 U.S.C. § 1408 and 28 U.S.C. §1409.

3. The Debtors currently own the following real property (the "Property"):

Real property known as 2721 Cottage Place, Greensboro, NC 27455, which real property is more particularly described as All of Lot 100, Northbrook, Section 3-S, Map Six, as per plat thereof recorded in Plat Book 82, Page 78, in the Office of the Register of Deeds of Guilford County, North Carolina.

4. The Trustee believes there may exist equity in the Property based upon the lien avoidance issues referenced in paragraph 8 below so that the sale of the Property by public auction (the "Auction") would be in the best interest of the estate and the creditors.

THE AUCTION DATE AND LOCATION

5. The Auction is tentatively scheduled for Saturday, November 6, 2010 at 11:00 a.m. at 2721 Cottage Place, Greensboro, North Carolina, pending the Court's approval of this motion. The Property will be sold "as is, where is" and with all faults.

6. The Property will be sold subject to confirmation of the Court at a hearing to be held on a date soon after the auction date. The confirmation hearing will be held at a date and time to be determined by the Court.

7. In this case, the Trustee intends to apply for an Order providing that the Trustee is authorized to employ and retain Action Auctions, Inc. (through Max L. Coleman as its principal) for such services as may be necessary and requested by the Trustee for the appraisal and/or the public auction sale of property of the estate, with such professional's compensation to be allowed by this Court upon separate application and after notice and hearing. The Trustee proposes to employ such auctioneer to conduct the auction. It will be proposed that the auctioneer's compensation shall be 6% of the amounts received from the auction, plus actual expenses incurred for advertising the sale and for property clean up; however, such professional's compensation is to be allowed by the Court only after separate application and after notice and hearing in the future.

VALUE OF AND ENCUMBRANCES ON THE PROPERTY

8. Coldwell Bankwell (assumed by the Trustee to be Coldwell Banker Mortgage, a New Jersey corporation) is scheduled by the Debtors as holding a first lien deed of trust on the Property in the amount of approximately \$76,387. In this case, PHH Mortgage Corporation filed a motion for relief from stay asserting that the Coldwell Banker Mortgage note and deed of trust recorded at Book 5982, Page 2863, Guilford County Registry, have been transferred to PHH Mortgage Corporation and that the approximate payoff is \$77,616.50. As set forth in that certain Objection by Trustee to Motion for Relief from Stay filed July 21, 2010, the Trustee contends that the PHH Mortgage Corporation deed of trust is not indexed in the names of the trustors under the security agreement as of petition date (July 1, 2010) or prior thereto so that the deed of trust gives no notice to bona fide purchasers or lien creditors with respect to the real property described in the deed of trust and therefore is not enforceable against the Trustee.

9. Citifinancial is scheduled by the Debtors as holding a second lien deed of trust secured by the Property. The Trustee's investigation confirms that a deed of trust in favor of CITIFINANCIAL SERVICES, INC. is recorded on March 17, 2004 in Book 6052, Page 2764, Guilford County Registry and that Citifinancial claims a total payoff of \$14,908.37, good through August 31, 2010, upon account number **-*-*-***7781.

10. The following schedule sets out the value of the Property as listed by the Debtors on their schedules and the liens and encumbrances of record on the Property:

<u>Property Address</u>	<u>Estimated Value (per Debtors schedules)</u>	<u>Property Taxes Asserted</u>	<u>Deed of Trust Liens Asserted</u>	<u>Total Encumbrances Asserted</u>
2721 Cottage Place Greensboro, NC 27455	\$92,000.00	\$1,169.05 (2010)	\$77,616.50 + \$14,908.37	\$93,693.92

11. The total amount of encumbrances asserted against the Property, including the PHH Mortgage and Citifinancial deed of trust liens and the ad valorem tax lien, equals approximately \$93,693.92. Based upon the Trustee's contention that the PHH Mortgage Corporation deed of trust is not properly indexed and is therefore not enforceable as a valid lien,

the Trustee believes that the public sale of the Property will satisfy all valid liens and bring funds into the estate.

THE SALE ORDER

12. To facilitate the transactions contemplated herein, the Trustee requests that any order (the “Sale Order”) authorizing the sale of the Property provide, inter alia:

- a) That the Court shall retain jurisdiction to determine any claims, disputes or causes of action arising out of or relating to the sale of the Property, the transactions contemplated hereby, and any objection to the sale of the Property;
- b) That the Trustee may sell the Property “as where, where is” with all faults;
- c) That the Trustee may sell the Property subject to the confirmation of the sale by the Court;
- d) That the Trustee may sell the Property free and clear of all liens and encumbrances to the highest bidder for the Property at the Auction, subject to confirmation of the sale of the Property by the Court;
- e) That the Court shall hold a confirmation hearing on a date soon after the auction date to be determined by the Court; and
- f) That the liens against the Property will attach to the proceeds of any sale of such Property and that the Trustee may use such proceeds to satisfy valid liens.

THE COURT SHOULD APPROVE THE SALE OF THE PROPERTY

13. The Trustee hereby requests the Court to enter the Sale Order, pursuant to sections 363(b), (f), and (m) of the Bankruptcy Code, approving and authorizing the sale of the Property at the Auction.

14. Section 363(b)(1) of the Bankruptcy Code authorizes the Trustee, after notice and a hearing, to sell property of the estate other than in the ordinary course of business. Courts generally defer to the business judgment of the Trustee in determining whether to authorize the sale of property of the estate under section 363(b)(1).

15. The proposed sale of the Property should benefit creditors of the estate by converting illiquid assets into cash available for distribution.

16. The Trustee believes that the Auction is the most expeditious method of obtaining a fair value for the Property.

17. Accordingly, the Trustee's intention to sell the Property at the Auction is the result of the sound business decision of the Trustee, is in the best interest of the bankruptcy estate and the creditors, and should be approved.

18. Section 363(f) authorizes the Trustee to sell the Property free and clear of any interests in the Property of an entity if, *inter alia*,

- a) such entity consents; or
- b) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; or
- c) such interest is in bona fide dispute; . . . or
- d) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

19. The Trustee further states that CitiFinancial orally has consented to the sale of the Property and to the transfer of liens to proceeds of sale. The Trustee requested confirmation in writing, but CitiFinancial stated that it did not have any letters which it could send so stating. The Trustee asserts that the real estate security interest claimed by PHH Mortgage Corporation is in bona fide dispute. Any such liens or other interests that exist, or may exist, would thus attach to the proceeds from the sale of the Property. Any liens determined to be valid will be paid from the applicable proceeds to the extent of their validity and to the extent that funds are available. Accordingly, the Trustee should be authorized to sell such Property free and clear of all liens and encumbrances.

20. It is in the best interests of the estate, its creditors and all of the above referenced parties for the Trustee to conduct a public auction sale of the Property with all claims of lien, encumbrances, and other claims of interest being transferred to the proceeds of sale pursuant to 11 U.S.C. § 363(f), but subject to the Trustee's request for recovery of 11 U.S.C. § 506(c) expenses, and subordinating the claimed or possible liens to reasonable Chapter 7 administrative costs with regard to the Property to be sold at public auction sale. The request for recovery of 11 U.S.C. § 506(c) expenses and subordination would include, but may not be limited to, auctioneer fees and expenses, allowed attorney's fees and expenses, allowed trustee commissions and expenses, and any other costs of administration related to the premises or utilities therefor. Section 363(f) authorizes the Trustee to sell the Property free and clear of any interests in the Property of an entity if, *inter alia*, such entity consents or if such interest is in bona fide dispute. Accordingly, based upon CitiFinancial's oral consent and otherwise based upon a bona fide dispute about the PHH Mortgage Corporation's claimed lien, the Trustee should be authorized to sell such Property free and clear of all liens and encumbrances subject to the Trustee's request for recovery of 11 U.S.C. § 506(c) expenses and for subordination of such claims or liens to reasonable Chapter 7 administrative costs.

WHEREFORE, the Trustee requests the relief described above and such other and further relief as to the Court may seem just and proper.

This the 7th day of September, 2010.

s/ Everett B. Saslow, Jr.
Everett B. Saslow, Jr.
N.C. State Bar No. 7301

OF COUNSEL:

HILL EVANS JORDAN & BEATTY
A Professional Limited Liability Company
Post Office Box 989
Greensboro, North Carolina 27402
Telephone: (336) 379-1390

CERTIFICATE OF SERVICE

This is to certify that the undersigned served a copy of the Motion of Trustee To: 1) Sell At Public Auction Certain Real Property; 2) Transfer Liens To the Proceeds of Sale; and 3) Schedule a Confirmation Hearing by depositing the same, enclosed in a postpaid wrapper, properly addressed to the following parties in interest, at their, last known addresses as shown below, in a post office or official depository under the exclusive care and custody of the United States Postal Service:

Michael D. West
US Bankruptcy Administrator
Post Office Box 1828
Greensboro, NC 27402

Gerald S. Schafer
Attorney for Debtors
220 Commerce Place
Greensboro, NC 27401

Brian T. McCully
Attorney for PHH Mortgage Corporation
10130 Perimeter Parkway, Suite 400
Charlotte, NC 28216

PHH Mortgage Corporation
Attention: Corporation Service Company, Registered Agent
327 Hillsborough Street
Raleigh, NC 27603

CitiFinancial Services, Inc.
Attention: Bankruptcy Service Center
P.O. Box 140069
Irving, Texas 75014-0069

CitiFinancial Services, Inc.
Attention: CT Corporation System, Registered Agent
150 Fayetteville St., Box 1011
Raleigh, NC 27601

Max L. Coleman
Action Auctions, Inc.
5313 Solar Place
Greensboro, NC 27406

This the 7th day of September, 2010.

s/ Everett B. Saslow, Jr.
Everett B. Saslow, Jr.